the foreign corporation bears no substantial economic risk with respect to the purchase and sale other than the risk of non-payment, the foreign corporation has not in substance derived income from the sale of property.

(5) *Receivables arising from performance of services.* If payment for services performed by a controlled foreign corporation is not made until more than 120 days after the date on which such services are performed, then the income derived by the foreign corporation constitutes income equivalent to interest to the extent that interest income would be imputed under the principles of section 483 or the original issue discount provisions (section 1271 *et seq.*), if—

(A) Such provisions applied to contracts for the performance of services,

(B) The time period referred to in sections 483(c)(1) and 1274(c)(1)(B) were 120 days rather than six months, and

(C) The time period referred to in section 483(c)(1)(A) were 120 days rather than one year.

[T.D. 8216, 53 FR 27498, July 21, 1988; 53 FR 29801, Aug. 8, 1988, as amended by T.D. 8556, 59 FR 37672, July 25, 1994. Redesignated and amended by T.D. 8618, 60 FR 46530, Sept. 7, 1995]

PART 5—TEMPORARY INCOME TAX REGULATIONS UNDER THE REVENUE ACT OF 1978

Sec.

AUTHORITY: 26 U.S.C. 7805.

§ 5.856–1 Extensions of the grace period for foreclosure property by a real estate investment trust.

(a) *In general.* Under section 856(e), a real estate investment trust (''REIT'') may elect to treat as foreclosure property certain real property (including interests in real property), and any personal property incident to such real property, that the REIT acquires after December 31, 1973. In general, the REIT must acquire the property as the result of having bid in the property at foreclosure, or having otherwise reduced the property to ownership or possession by agreement or process of law, after there was default (or default was imminent) on a lease of such property (where the REIT was the lessor) or on an indebtedness owed to the REIT which such property secured. Property that a REIT elects to treat as foreclosure property ceases to be foreclosure property with respect to such REIT at the end of a grace period. The grace period ends on the date which is 2 years after the date on which the REIT acquired the property, unless the REIT has been granted an extension or extensions of the grace period. If the grace period is extended, the property ceases to be foreclosure property on the day immediately following the last day of the grace period, as extended.

(b) *Rules for extensions of the grace period.* In general, §1.856–6(g) prescribes rules regarding extensions of the grace period. However, in order to reflect the amendment of section 856(e)(3) of the Code by section 363(c) of the Revenue Act of 1978, the following rules also apply:

(1) In the case of extensions granted after November 6, 1978, with respect to extension periods beginning after December 31, 1977, the district director may grant one or more extensions of the grace period for the property, subject to the limitation that no extension shall extend the grace period beyond the date which is 6 years after the date the REIT acquired the property. In any other case, an extension shall be for a period of not more than 1 year, and not more than two extensions can be granted with respect to the property.

(2) In the case of an extension period beginning after December 31, 1977, a request for an extension filed on or before March 28, 1980, will be considered to be timely if the limitation on the number and length of extensions in section 856(e)(3), as in effect before the amendment made by section 363(c) of the Revenue Act of 1978, would have barred the extension.

[T.D. 7767, 46 FR 11284, Feb. 6, 1981]

§ 5.1502–45 Limitation on losses to amount at risk.

(a) *In general*—(1) *Scope.* This section applies to a loss of any subsidiary if the common parent's stock meets the stock ownership requirement described in section 465(a)(1)(C).

(2) *Limitation on use of losses.* Except as provided in paragraph (a)(4) of this section, a loss from an activity of a subsidiary during a consolidated return year is includible in the computation of consolidated taxable income (or consolidated net operating loss) and consolidated capital gain net income (or consolidated net capital loss) only to the extent the loss does not exceed the amount that the parent is at risk in the activity at the close of that subsidiary's taxable year. In addition, the sum of a subsidiary's losses from all its activities is includible only to the extent that the parent is at risk in the subsidiary at the close of that year. Any excess may not be taken into account for the consolidated return year but will be treated as a deduction allocable to that activity of the subsidiary in the first succeeding taxable year.

(3) *Amount parent is at risk in subsidiary's activity.* The amount the parent is at risk in an activity of a subsidiary is the lesser of (i) the amount the parent is at risk in the subsidiary or (ii) the amount the subsidiary is at risk in the activity. These amounts are determined under paragraph (b) of this section and the principles of section 465. See section 465 and the regulations thereunder and the examples in paragraph (e) of this section.

(4) *Excluded activities.* The limitation on the use of losses in paragraph (a)(2) of this section does not apply to a loss attributable to an activity described in section 465(c)(3)(D).

(5) *Substance over form.* Any transaction or arrangement between members (or between a member and a person that is not a member) which does not cause the parent to be economically at risk in an activity of a subsidiary will be treated in accordance with the substance of the transaction or arrangement notwithstanding any other provision of this section.

(b) *Rules for determining amount at risk*—(1) *Excluded amounts.* The amount a parent is at risk in an activity of a subsidiary at the close of the subsidiary's taxable year does not include any amount which would not be taken into account under section 465 were the subsidiary not a separate corporation. Thus, for example, if the amount a parent is at risk in the activity of a subsidiary is attributable to nonrecourse financing, the amount at risk is not more than the fair market value of the property (other than the subsidiary's stock or debt or assets) pledged as security.

(2) *Guarantees.* If a parent guarantees a loan by a person other than a member to a subsidiary, the loan increases the amount the parent is at risk in the activity of the subsidiary.

(c) *Application of section 465.* This section applies in a manner consistent with the provisions of section 465. Thus, for example, the recapture of losses provided in section 465(e) applies if the amount the parent is at risk in the activity of a subsidiary is reduced below zero.

(d) *Other consolidated return provisions unaffected.* This section limits only the extent to which losses of a subsidiary may be used in a consolidated return year. This section does not apply for other purposes, such as §§ 1.1502–32 and 1.1502–19, relating to investment in stock of a subsidiary and excess loss accounts, repectively. Thus, a loss which reduces a subsidiary's earnings and profits in a consolidated return year, but is disallowed as a deduction for the year by reason of this section, may nonetheless result in a negative adjustment to the basis of an owning member's stock in the subsidiary or create (or increase) an excess loss account.

(e) *Examples.* The provisions of this section may be illustrated by the examples in this paragraph (e). In each example, the stock ownership requirement of section 465(a)(1)(C) is met for the stock of the parent (P), and each affiliated group files a consolidated return on a calendar year basis and comprises only the members described.

Example (1). In 1979, P forms S with a contribution of $200 in exchange for all of S's stock. During the year, S borrows $400 from a commercial lender and P guarantees $100 of the loan. S uses $500 of its funds to acquire a motion picture film. S incurs a loss of $120

for the year with respect to the film. At the close of 1979, the amount P is at risk in S's activity is $300. If S has no gain or loss in 1980, and there are no contributions from or distributions to P, at the close of 1980 P's amount at risk in S's activity will be $180.

Example. (2). P forms S–1 with a capital contribution of $1 on January 1, 1980. On February 1, 1980. S–1 borrows $100 with full recourse and contributes all $101 to its newly formed subsidiary S–2. S–2 uses the proceeds to explore for natural oil and gas resources. S–2 incurs neither gain nor loss from its explorations during the taxable year. As of December 31, 1980, P is at risk in the exploration activity of S–2 only to the extent of $1.

(f) *Effective date.* This section applies to consolidated return years ending on or after December 31, 1979.

[T.D. 7685, 45 FR 16484, Mar. 14, 1980]

§ 5.1561–1 Taxable years of component members of controlled group of corporations that include December 31, 1978.

(a) *In general.* This section prescribes a regulation for applying sections 301 (a) and (b) (19), and 106, of the Revenue Act of 1978 (the Act) in the case of certain taxable years of component members of a controlled group of corporations (as defined in section 1563 of the Internal Revenue Code). The section applies only to taxable years that include December 31, 1978, and only if the taxable year of at least one component member ends in 1979.

(b) *Background.* Section 301(a) of the Act amends section 11 of the Code (relating to tax imposed on corporations) to provide for taxable income brackets that are subject to tax at rates less than the maximum rate of 46 percent. Section 301(b)(19) of the Act amends section 1561(a) of the Code (relating to limitations on certain multiple tax benefits in the case of certain controlled corporations) to limit the component members of a controlled group to an aggregate amount in each bracket which does not exceed the maximum amount in such bracket to which a corporation which is not a component member of a controlled group is entitled. Section 106 of the Act amends section 21 of the Code (relating to effect of changes in rate of tax) to provide that the amendments made by section 301 of the Act shall be treated as a change in a rate of tax. Since the amendments made by section 301 of the Act are effective for taxable years beginning after December 31, 1978, under the amendment to section 21 the effective date of the change in rate of tax is January 1, 1979.

(c) *No apportionment plan in effect.* If no apportionment plan (see § 1.1561–3 of the Income Tax Regulations) is in effect with respect to December 31, 1978, the single $50,000 surtax exemption available before January 1, 1979, and the single bracket amounts available after December 31, 1978, shall be equally divided among the component members of the controlled group on December 31, 1978. In the case of a controlled group which includes component members that join in the filing of a consolidated return and other component members that do not join in the filing of such a return, each component member of the group (including each component member that joins in filing the consolidated return) shall be treated as a separate corporation for purposes of equally apportioning the $50,000 surtax exemption in effect before January 1, 1979, and the bracket amounts in effect after December 31, 1978. In such a case, the surtax exemption and bracket amounts of the corporations filing the consolidated return shall be the sum of the amount apportioned to each component member that joins in filing the consolidated return.

(d) *Apportionment plan.* (1) If one or more component members of the controlled group have a calendar taxable year and if an apportionment plan is adopted under § 1.1561–3 apportioning the entire $50,000 surtax exemption available for 1978 to such calendar-year members, then the amount in each taxable income bracket available for fiscal-year members is zero. If only a part of the $50,000 surtax exemption is apportioned to calendar-year members, then a proportionate part of the $25,000 amount in each taxable income bracket is available for the fiscal-year members. For example, if $30,000 (⅗ of $50,000) is apportioned to calendar-year members, ⅗ of the $25,000 amount in each bracket, or $10,000, as well as the remaining ⅖ of the 1978 surtax exemption, is available to the fiscal-year members.

(2) The amount in each taxable income bracket available to fiscal-year members may be apportioned among such members in any manner the controlled group may select. For example, the available amount in the first bracket (subject to a 17-percent rate) may be allocated to one member, the amount in the second bracket (subject to a 20-percent rate) may be allocated to another member, and so on. Moreover, the available amount in each bracket may be divided among the members in any manner the group may select.

(3) In computing 1978 tentative taxes under section 21, the total surtax exemption available to fiscal-year members for 1978 must be divided among such members in the same proportion as the sum of the available amount in each bracket is divided among them. Thus, if the sum of the available bracket amounts is $100,000 (*i.e.*, $25,000 in each bracket), and if corporation X is apportioned 30 percent, or $30,000, of this amount (regardless of which brackets corporation X may select), then 30 percent of the surtax exemption available to the fiscal-year members for 1978 (*i.e.*, 30 percent of $50,000, or $15,000) must be apportioned to corporation X.

(e) *Corporations affected.* The provisions of section 1561 may reduce the surtax exemption or bracket amounts of any corporation which is a component member of a controlled group of corporations and which is subject to the tax imposed by section 11, or by any other provision of subtitle A of the Code if the tax under such other provisions is computed by reference to the tax imposed by section 11. Such other provisions include, for example, sections 511(a)(1), 594, 802, 831, 852, 857, 882, 1201, and 1378.

(f) *Example.* This section may be illustrated by the following example:

Example. Corporations X, Y, and Z are component members of a controlled group of corporations on December 31, 1978. X has taxable income of $10,000 for the taxable year ending December 31, 1978. Y has taxable income of $60,000 for the taxable year ending June 30, 1979. Z has taxable income of $90,000 for the taxable year ending September 30, 1979. The group files an apportionment plan under §1.1561–3 apportioning $10,000 (*i.e.*, ⅕ of $50,000) to X, the calendar-year member. Therefore, ⅘ of the amount in each bracket, or $20,000, is available to Y and Z, the fiscal-year members. Under the plan, Y is apportioned the entire amount in the first bracket and $10,000 of the amount in the second bracket. Z is apportioned $10,000 of the amount in the second bracket and the entire amount in the third and fourth brackets. Therefore, Y is apportioned $30,000, or ⅜ of the total available amount in the four brackets, and Z is apportioned $50,000, or ⅝ of the total available amount. The tax liabilities of Y and Z for their taxable years ending in 1979 are computed as follows: (Computation of X's tax liability for 1978, using a surtax exemption of $10,000, is not shown.)

1979 TENTATIVE TAX

	Y
Taxable income	$60,000
Tax on amount in first bracket: 17 percent of $20,000	3,400
Tax on amount in second bracket: 20 percent of $10,000	2,000
Tax on remaining income: 46 percent of $30,000	13,800
1979 tentative tax	19,200

	Z
Taxable income	90,000
Tax on amount in second bracket: 20 percent of $10,000	2,000
Tax on amount in third bracket: 30 percent of $20,000	6,000
Tax on amount in fourth bracket: 40 percent of $20,000	8,000
Tax on remaining income: 46 percent of $40,000	18,400
1979 tentative tax	34,400

1978 TENTATIVE TAX

	Y
Taxable income	60,000

1978 TENTATIVE TAX

Normal tax:			
20 percent of $7,500 (3/8 of $20,000)			1,500
22 percent of $52,500			11,550
			13,050
Surtax:			
Taxable income	$60,000		
Surtax exemption	15,000	(3/8 of $40,000)	
	$45,000	×26 percent	11,700
1978 tentative tax			24,750
			Z
Taxable income			90,000
Normal tax:			
20 percent of $12,500 (5/8 of $20,000)			2,500
22 percent of $77,500			17,050
			19,500
Surtax:			
Taxable income	$90,000		
Surtax exemption	25,000	(5/8 of $40,000)	
	$65,000	× 26 percent	16,900
1978 tentative tax			36,450
The 1978 and 1979 tentative taxes are apportioned as follows:			
Corporation Y:			
1978—184/365 of $24,750			12,477
1979—181/365 of $19,200			9,521
Total tax for taxable year			21,998
Corporation Z:			
1978—92/365 of $36,450			9,187
1979—273/365 of $34,400			25,729
Total tax for taxable year			34,916

[T.D. 7583, 44 FR 872, Jan. 4, 1979]

§ 5.6411–1 Tentative refund under claim of right adjustment.

(a) *Effective date.* This section applies to applications for tentative refunds filed after November 5, 1978, under section 6411(d).

(b) *In general.* Section 6411(d) allows taxpayers to apply for a tentative refund of amounts treated under section 1341(b)(1) as an overpayment of tax under a claim of right adjustment. This section contains rules for filing an application for this tentative refund. The computation of amounts treated as an overpayment must be made in accordance with section 1341 and the regulations under that section.

(c) *Method of applying for tentative refund*—(1) *In general.* For a corporation, the application is made by filing Form 1139. For taxpayers other than corporations, the application is made by filing Form 1045. The application must be made by filing those forms even if the taxpayer is not applying for a tentative carryback adjustment under section 6411(a). If the taxpayer files the form to apply for the section 6411(d) tentative refund only, it may disregard those lines on the form used to compute the section 6411(a) carryback adjustment. If the taxpayer has a carryback of a net operating loss, credit, or capital loss for the taxable year (determined without the deduction described in section 1341(a)(2)) and applies for both the section 6411(a) tenative carryback adjustment and the section 6411(d) tentative refund, an ordering rule applies. The taxpayer must take into account any adjustments made in applying for the tentative carryback adjustment under section 6411(a) before determining the amount of the overpayment for which an application under section 6411(d) is being made. The taxpayer

must attach to the form a separate schedule containing the information required under paragraph (d) of this section.

(2) *Applications made before February 7, 1980.* Applications made before February 7, 1980 that are made under penalties of perjury will be considered meeting the requirements of this section if made by filing a separate statement whether or not it is attached to Form 1139 or 1045. This application, however, must contain the information required under paragraph (d) of this section (other than paragraph (d)(2)).

(d) *Information required*—(1) *In general.* The application must contain (i) the taxpayer's name, address, and identification number and (ii) the information set forth in paragraph (d) (2) and (3) of this section, determined in accordance with section 1341 and the regulations under that section. For example, the decrease in tax under paragraph (d)(3)(iii) of this section is determined under §1.1341–1(d)(4).

(2) *Computation under section 1341(a)(4).* The application must contain the following information related to the computation under section 1341(a)(4):

(i) The amount of income restored by the taxpayer to another during the taxable year and the amount of the corresponding deduction described in section 1341(a)(2);

(ii) The tax for the taxable year computed with the deduction described in section 1341(a)(2); and

(iii) The tax for each prior taxable year (determined before adjustment under section 1341) to which any net operating loss described in section 1341(b)(4)(A) may be carried and the decrease in tax for each of those years that results from the carryback of that loss.

(3) *Computation under section 1341(a)(5).* The application must contain the following information related to the computation under section 1341(a)(5):

(i) The tax for the taxable year without the deduction described in section 1341(a)(2);

(ii) The tax for each prior taxable year (determined before adjustment under section 1341) for which a decrease in tax is computed under section 1341(a)(5)(B);

(iii) The decrease in tax for each prior taxable year computed under section 1341(a)(5)(B), including any decrease resulting from a net operating loss or capital loss described in section 1341(b)(4)(B); and

(iv) The amount treated as an overpayment of tax under section 1341(b)(1).

(e) *Time and place for filing.* The application must be filed no earlier than the date of filing the return for the taxable year of restoration and no later than the date 12 months from the last day of that taxable year. The application must be filed with the Internal Revenue Service Center (or other office) where the taxpayer filed its return for the taxable year of restoration.

(f) *Not a claim for credit or refund.* An application for tentative refund under section 6411(d) is not a claim for credit or refund. The principles of paragraph (b)(2) of §1.6411–1 apply in determining the effect of an application for a tentative refund. For example, the filing of an application for tentative refund under section 6411(d) is not a claim for credit or refund in determining whether a claim for credit or refund was timely filed.

[T.D. 7672, 45 FR 8295, Feb. 7, 1980; 45 FR 17138, Mar. 18, 1980]

PART 5c—TEMPORARY INCOME TAX REGULATIONS UNDER THE ECONOMIC RECOVERY TAX ACT OF 1981

Sec.